

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN MARK NOENNIG**, on January 23, 2003 at 3:30 P.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Mark Noennig, Chairman (R)
Rep. Eileen J. Carney, Vice Chairman (D)
Rep. Scott Mendenhall, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Rod Bitney (R)
Rep. Larry Cyr (D)
Rep. Ronald Devlin (R)
Rep. Gary Forrester (D)
Rep. Ray Hawk (R)
Rep. Hal Jacobson (D)
Rep. Jesse Laslovich (D)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Penny Morgan (R)
Rep. Alan Olson (R)
Rep. Holly Raser (D)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Linda Keim, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

The time stamp for these minutes appears at the beginning of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: HB 324, HB 264, HB 272, 1/15/2003
Executive Action: None

HEARING ON HB 324

{Tape: 1; Side: A; Approx. Time Counter: 1.5- 7.9}

Sponsor: REP. NANCY RICE FRITZ, HD 69, MISSOULA

Opening Statement by Sponsor:

REP. RICE FRITZ said that HB 324 is a bill to add housing affordability to the criteria for review of subdivisions by local governments. Affordable housing means that a household pays no more than 30% of its income on housing costs. For home owners, this includes the principal and interest on the loan, the taxes and insurance. For renters, it means the rent payment and the utilities. She said that each committee member received a letter outlining the percentage of people in their county who cannot afford to purchase a home or rent an apartment.

EXHIBIT (loh14a01)

Currently in the Missoula area, the average cost of a home is \$161,500, and 58% of Missoula homeowners cannot afford a three bedroom home. Between 1990 and 2000, housing prices rose 48% and wages rose only 2%. Lack of affordable housing is a major problem. It makes owning a home more expensive and can be inconvenient when unable to find a home near work or your children's school.

Public costs associated with inadequate housing fall into three sectors:

- 1) Lost economic opportunity: Households that spend more than 30% of their budget on housing are limited in their ability to purchase other goods such as food, transportation, healthcare, childcare, and retail items.
- 2) Infrastructure: As communities grow, the balance between where workers live and where they work become strained. The community must pay for new and improved roads, new schools, new water, new sewers and utilities. Missoula has had to close four elementary schools because of decreased enrollments.
- 3) Direct and Indirect social costs related to healthcare and education: Research has established the relationship between the health of our families and the condition and the stability of their housing. The most severe costs are homelessness, domestic violence, mental health, childcare, and other social services. The more stable the home a child comes from, the more likely they are to succeed in school and later in the workforce.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 8.8 - 14}

Tim Davis, Montana Smart Growth Coalition, read his written testimony to the committee.

EXHIBIT (loh14a02)

{Tape: 1; Side: A; Approx. Time Counter: 14.2 - 20.6}

Deb Halliday, Policy Analyst with the Center for Policy Analysis and Community Change (CPACC) and a member of the Missoula City-County Consolidated Planning Board, said that CPACC put together (Exhibit 1 above) an information sheet for each committee member. She stated that in Montana as a whole, the average cost of a home is \$140,000. A family would need to make a minimum of \$36,000 a year in order to afford a home. New homes being built sell for an average of \$182,000. This bill is intended to give governing bodies good information about a broader context of their community.

Ms. Halliday said that the Montana Board of Housing runs different programs and allocations of funds through the Board of Housing: the revolving loan account for affordable housing, their home program, and their low interest tax credits.

One of the arguments against HB 324 is that it does not belong in subdivision regulations. It is important to understand that there are very few places for local communities to get good information. One of the few places is in our public interest criteria.

Ms. Halliday said that CPACC challenges folks to work with them to find other ways to consider affordable housing. She said that the Board of Housing regularly collects housing data and housing needs in communities and will make that available to the public. She stated that this is an information tool, and is not meant to be an incentive tool for developers.

{Tape: 1; Side: A; Approx. Time Counter: 21 - 25.2}

Jennifer Bannon, Citizen of Whitefish, Montana, said there is a need to add affordable housing to the subdivision review criteria. The average home in Whitefish costs \$268,000. Many of the houses being built are large second and third homes. She said that the core of people in the community, the moderate income families, are left to rent, or forced to move outside of the city limits.

Ms. Bannon said that she polled ten friends who entered the housing market this past year. Out of the ten, only one had previously owned their home, and was able to afford to buy a house within the city limits. Those nine first-time home buyers

(couples) were business owners, carpenters, teachers, a physical therapist, a regional youth coordinator, a non-profit worker, service workers, and retail managers. Eight of these couples built in the county. One was a Whitefish elementary school teacher who decided to move to another town where he could afford a home in the town where he worked. She said that this type of thing is happening all across the state.

{Tape: 1; Side: A; Approx. Time Counter: 25.2 - 26.9}

Gene Fenderson, Montana Progressive Labor Caucus, said they support HB 324 because it will increase affordable housing for working men and women across Montana. "This is just one small piece of the pie that could help start our communities to look at this problem." He said that he served as Chairman of the Helena Housing Authority twice, and that housing problems increase every year. He asked for a DO PASS on HB 324.

{Tape: 1; Side: A; Approx. Time Counter: 26.9 - 29.8}

Mary Caferro, Organizer, Working for Equality and Economic Liberation (WEEL) in Helena, asked for support of HB 324 and read a letter from her counterpart in Missoula, Andrea Shipley. The letter said that three-fourths of the advocacy calls that Andrea Shipley received during the past six months have been related to the high price of rent in the Missoula area. One fourth of the 2,229 homeless people in Montana live in Missoula, and 344 of the total 562 homeless in Missoula are members of families with children. Across the state, more than 60% of homeless people live in families; nationally the percentages range from 30-40%. The average cost of rent in Missoula is \$543 a month, and a \$7 an hour job will not cover rent, utilities, groceries, healthcare, childcare and transportation. She said we must reclaim our state from poverty and start by obtaining affordable rent.

{Tape: 1; Side: A; Approx. Time Counter: 29.8 - 31.1}

Judy Smith, Board Member for HOMEWORD, which deals with affordable housing in Missoula and Billings, said that she wanted to make it clear that the housing crisis was not just in one part of the state. The average price of a home in Billings is now over \$121,000, and fair market rent is \$537. HOMEWORD just started a homeowners class in Billings and has a large number of people wanting to buy homes. They also have a Home Start Program where the City of Billings puts up a certain amount of money, and after people take the Home Start class, they can get a better rate to buy a home. The purpose of this bill is to serve as a reminder that there is a housing crisis.

{Tape: 1; Side: B; Approx. Time Counter: 0.0 - 2.1}

Steve Yeakel, representing the ten Directors of Montana's Human Regional Development Councils, said that there is an HRDC in all of Montana's seven major towns; also in Glendive, Lewistown and Havre. He said that housing is not usually discussed in terms of the state budget, and that this would help resolve an important part of the safety-net problem for Montana's poor, working poor, and lower middle incomes. He asked for consideration of HB 324.

Ann Hedges, Montana Environmental Information Center, said this is just one small piece of the puzzle and they can't understand why it wouldn't be approved. She said that the committee will hear that this might be exclusive, i.e., "If you don't have affordable housing in your subdivision you will be denied; but in fact if you don't have agriculture in your subdivision you are not denied. This is just a review criteria, it is not definitive. It is just an analysis for affordable housing."

Opponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 2.3 - 6.8}

Rod Wilson, Montana Association of Realtors, Billings, said that they oppose HB 324. He said that affordable housing is an issue that they are concerned about; however, this bill does not address affordable housing with ideas for regulatory reform. The intent is good, but it needs to be in growth policy or in planning. If this criteria is added under this section of law, it is no longer a choice. That would not be such a problem if the project were being designed with incentives to provide affordable housing.

He estimated that in a subdivision with 10,000 square foot lots, that the cost is from \$25-30,000 per lot to provide all city services, \$2,500 in platting and engineering costs, \$2,000 in fees for hook-up to infrastructure, and \$1500 per lot for future infrastructure development. This is around \$37,000 - \$42,000 for the lot; the land still needs to be purchased, and there are carrying costs during the time it takes to sell the land.

New development can provide "move-up housing" for those with growing families and incomes. This would free-up less expensive homes that provide that first rung on the home ownership ladder. Adding more regulatory criteria and increasing development cost is not the way to achieve affordable housing.

{Tape: 1; Side: B; Approx. Time Counter: 6.8 - 9.7}

Harold Blattie, Assistant Director, Montana Association of Cities and Towns (MACO), said that he does not disagree with the need, but that this is not the appropriate section of statute. He explained that the Subdivision and Platting Act is an act to divide pieces of property while providing services and infrastructure. The act has nothing to do with what type of home or other use may be determined by the covenants placed on the land by the developer, or the choices made by the purchaser. He said that he could not see how a local government could quantify affordable housing. He asked, "Do we deny a subdivision based upon all these other factors which neither the developer nor the local governing body has any control."

{Tape: 1; Side: B; Approx. Time Counter: 9.7 - 10.4}

Byron Roberts, Montana Building Industry Association, said Montana has one of the highest homeowner rates in the nation at 70%. He agreed with Harold Blattie that this does not belong in the subdivision laws. They are designed to provide descriptive standards for street widths, gradients, continuity of services, protection of riparian areas, etc. He asked for a "no" vote.

{Tape: 1; Side: B; Approx. Time Counter: 10.5 - 11.9}

Clayton Fiscus, Citizen and Broker Owner of Fiscus Realty, Billings, said that he has been selling real-estate for over 25 years. He said that he is very sympathetic towards affordable housing and that even though it was mentioned earlier that large, expensive houses are a detriment, they are on the "housing ladder." When someone moves into one of them, they leave a vacancy at a lower price, and this goes on down the line with people moving up the housing ladder. A house selling at \$200,000 could provide an opportunity for someone to buy a house on the bottom end. He said that he has seen this work many times.

Mr. Fiscus stated that he has been part of the development of real estate in three subdivisions, and all of them sold out. They were all located in rural areas and the highest priced lots sold for \$19,000. All of those fees drive the price up and that is what we should be working on with this issue, not in the Subdivision and Platting Act.

{Tape: 1; Side: B; Approx. Time Counter: 11.9 - 14}

Howard Gipe, County Commissioner, Flathead County, said that he agreed with the other opponent's testimony.

Jim Kembel, Montana Registered Land Surveyors, said that he also agreed with the other opponents. He said that all wage scales

have trouble getting into housing and that it should be "attainable" rather than "affordable." In Montana there is a trend for a subdivision to become a planning tool. Growth policy, zoning, and planning should all be done before the land becomes a subdivision.

Informational Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 14.2 - 14.6}

Bruce Brensdal, Division Administrator, Housing Division, Department of Commerce and Executive Director for Montana Board of Housing, said that he would be happy to address any questions they may have today.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 15 - 20.3}

REP. BECKER asked how accessible housing affordability information is. **Bruce Brensdal** answered that HUD requires them to gather housing information throughout the state. He said that they have a lot of pertinent information, and that the U.S. Census has housing statistics which are also available on the World Wide Web.

REP. JACOBSON referred to Lines 22-25 on page one of the bill and asked about the review criteria. He asked how the agriculture component would be evaluated. **Harold Blattie** said that typically the planning office will do the review. If the subdivision people say that they will take 322 acres out of production, of which 146 are considered to be soils of significant importance according to soil survey maps, consideration should be given to an agricultural operation in the vicinity. If there is a pork production and someone proposes a development right next to it, it can be seen that down the road there will be a problem. **REP. JACOBSON** asked if these issues are quantifiable. **Harold Blattie** said that generally that was true.

REP. JACOBSON said that it was mentioned there was no other place in the law where this issue would be brought to the public's attention. He asked for more information. **Tim Davis** said that since there are large parts of the state that are not zoned and haven't had any planning done, this is the only place in the law for subdivisions to address this issue. If agriculture is not an issue for this subdivision or this lot, a subdivider can say that it is not an issue.

{Tape: 1; Side: B; Approx. Time Counter: 20.4 - 30}

REP. MORGAN referred to Tim Davis' answer to **REP. JACOBSON's** question and asked Clayton Fiscus what his thoughts were on this. **Clayton Fiscus** said that once the subdivision is approved, zoning approval is requested from the city council. Currently, there are planned unit developments in the City of Billings where the density is quite high, and they still have single family residences on 5-6,000 square foot lots to try to drive the cost of that lot down.

REP. MORGAN asked for clarification: "Do you go to the city after the subdivision has been approved?" **Clayton Fiscus** replied that the city, along with the developer, approves the type of building. Usually they try to get the lot size down as small as they can to make more money. The barrier to affordable housing is after the subdivision process begins. For example, there are subdivisions in Yellowstone County that have park requirements. People in the affordable housing group should work with them to take away those barriers.

REP. BITNEY referred to testimony that said that the average cost of a house in Whitefish was \$268,000. **Jennifer Bannon** said she meant to say "median" and not "average". She said that the information came from a member of the Whitefish City-County Planning Board. **REP. BITNEY** queried that if this included ranches or large amounts of acreage, how was acreage factored in? **Jennifer Bannon** said that this is probably within five miles of Whitefish, where there are smaller lot sizes with large homes, as well as large homes on 20-40 acre parcels.

REP. BITNEY referred to the last paragraph of the Fiscal Note where it mentions a requirement for local government review, and talks about significant costs. The statement was made that there would not be any extra cost to developers. He queried: "If the county has higher review costs, wouldn't the developers have them too?" **Tim Davis** said that he does not agree with the Fiscal Note. He said that most of the information that the Fiscal Note is based on is already being collected by the state and that he did not believe that it would create significant new costs on either side.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.6}

REP. RASER commented that testimony from Tim Davis indicated that this is the only area of law that all communities must address for subdivision review, but that not all communities have zoning or growth policies. She said that she recalled hearing about recent legislation requiring communities of a certain size to have growth policies in place, and asked for more information. **Harold Blattie** said that SB 97 was passed in the 1999 Session,

and it directed that all units of local government develop a local growth policy prior to October 2001. Very few have been able to do that because of the cost. He commented on the Fiscal Note, and stressed: "You really aren't passing a cost along to the local government, because eventually the cost gets passed along to the developer through increased subdivision review fees, and to the purchaser." The unintended consequence of the bill is that it drives up the cost of housing, rather than reducing it.

REP. RASER asked: "When communities are directed to have these growth policies, where would be a better place to address affordable housing issues? Would a community consider that a criteria for setting a growth policy?" **Harold Blattie** said: "That is a significant question." He said that he would like to have more time to think about that question before he answered.

REP. RASER asked Mr. Blattie if he would be willing to work with Mr. Davis to come up with some areas of the law where it would be appropriate to address this important issue. **Harold Blattie** said they have worked with Mr. Davis in the past, and would be willing to work with all interested parties to try to find solutions.

REP. RASER asked if this is something that could be productive. She said that there seems to be some question as to which area of the law would be the best. **Tim Davis** said that Montana Smart Growth Coalition (MSGC) spoke with the realtors prior to today's hearing, and they all agreed that affordable housing is an issue. He stated that MSGC does not have an amendment today, but that they would be happy to work together. He said that he disagreed with Mr. Blattie, and that SB 97 did not direct all local governments to do a growth policy.

REP. MAEDJE asked if there were federal funds available for affordable housing that would absorb the cost for developers. **Bruce Brensdal** said that there are funds available, and that they operate programs on behalf of the IRS, etc. He said that he knew of no programs that would cover some of the costs being discussed here. He also did not know of any funds being available for a market rate project that has limitations on the buyer or the renter. He said that accessing Community Development Block Grant (CDBG) type funds to do infrastructure would help communities.

Closing by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 6.6 - 8}

REP. RICE emphasized that although the criteria on affordable housing would be mandatory, the local government has discretion in its application. Local governments would use this tool to

acquire data to determine how the new subdivision will impact the community's need. She asked for a DO PASS on HB 324.

HEARING ON HB 264

{Tape: 2; Side: A; Approx. Time Counter: 8.6 - 10.5}

Sponsor: REPRESENTATIVE CAROL GIBSON, HD 20, BILLINGS

Opening Statement by Sponsor:

REP. GIBSON said HB 264 would require that county officers use county personnel policy when dealing with their staff.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 10.5 - 14.5}

Harold Blattie, Assistant Director Montana Association of Counties (MACO), said that there have been many instances of supervisors not following the requirements of both federal and state law during personnel hiring and firing and subjecting the governing body to lawsuits. Amendments have been drafted to clarify that this is not meant to supervise the elected official, but to require their use of personnel policy.

EXHIBIT (loh14a03)

Bill Kennedy, Yellowstone County Commissioner, said this bill is just to cover the liability question, by clarifying that everyone needs to follow uniform county personnel policies.

Terry Minow, Montana Education Association-Montana Federation of Teachers, (MEA-MFT), said they represent county employees of Jefferson, Butte-Silver Bow, and Missoula counties. She said that it makes sense that the commissioners who are the trustees of the county are the employer, and should be able to set employee personnel policy and make sure everyone abides by them.

Anita Varone, Lewis and Clark County Commissioner, urged the committee to vote favorably on HB 264.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 2; Side: A; Approx. Time Counter: 15.8 - 22.9}

REP. MORGAN asked why this clarification was necessary. **Bill Kennedy** said that if there is no uniformity, some elected officials may not follow personnel policies. Yellowstone County recently had just such a problem, and not adhering to policy cost the county a lot of money in lawsuits.

REP. CARNEY asked if there are consequences for not following policy and what they are. **Bill Kennedy** said that by having this uniformity in Statute, supervisors would be more likely to adhere to it, but if they break Statute, there are consequences.

CHAIRMAN NOENNIG asked for further follow-up on the question of consequences. "Did someone refuse to follow the policy or not know about it?" **Bill Kennedy** explained that an elected official wrote their own personnel policy on hiring and firing and did not follow the standards adopted by the commissioners. He said that there is nothing in Statute that requires adherence to policy.

CHAIRMAN NOENNIG asked whether a department violated its own policy. "Or did it follow its own policy, which was different from the county policy, which resulted in the liability?" **Bill Kennedy** said: "That is correct." In countywide policy every employee "signs off" on an acknowledgment that they have read the policy. Yellowstone County had an elected official that wrote their own policy on terminations, breaks and vacations, and decided not to follow it.

CHAIRMAN NOENNIG asked if the employee's claim was that they didn't like the policy, i.e., it isn't county policy, and the county has no power to do this even though they are the employer? **Bill Kennedy** said that when they negotiate, they have seven bargaining units in the county and they also go back to policy adopted in those bargaining units. If policies are not followed, the bargaining units are not adhering to the contract. There have been many grievances relating to contract adherence.

CHAIRMAN NOENNIG asked if the elected official that adopted their own policy agreed with this plan. **Bill Kennedy** said that the elected official is no longer an elected official.

{Tape: 2; Side: A; Approx. Time Counter: 22.9 - 24}

Closing by Sponsor:

REP. GIBSON said that she hoped all the committee's questions were answered satisfactorily and asked for a DO PASS on both the bill and the amendments.

HEARING ON HB 272

{Tape: 2; Side: A; Approx. Time Counter: 24.4 - 29}

Sponsor: REP. KIM GILLAN, HD 11, BILLINGS HEIGHTS

Opening Statement by Sponsor:

REP. GILLAN said that changes to HB 272 are on pages seven and nine. She said that the bill concerns trust. Counties want to make sure that the state does not use the Entitlement Share that came out of HB 124 to pay for other debts. She said that this bill has nothing to do with any particular circumstances, and explained that counties entered into a contract, and certain dollars that were originally kept at the local level now go to the state. Counties want to make sure that the state continues to return all of the Entitlements for the long term.

Proponents' Testimony:

Bill Kennedy, Yellowstone County Commissioner, referred to changes on pages seven and nine and said that the Commissioners want to ensure that no one touches the Entitlement at any time in the future, and that it comes back to counties as was intended.

Harold Blattie, Assistant Director, Montana Association of Counties (MACO), emphasized that this is not an exclusive Entitlement Share bill, but that it deals with any payments owed. Currently, any payments to the counties under Title 17 can be offset. Examples are: gas tax which is distributed monthly to counties, and federal forest payments.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Counter: 0 - 5.8}

REP. DEVLIN asked for clarification. "Should the state wait for the county to pay them back, and not withhold the money that was incorrectly paid to them as a result of a miscalculation?" **Bill Kennedy** said that the counties are talking about money that is owed to the county. He said that if it is an overpayment, the state should anticipate that the county will pay them back. He referred to page seven, line 18: "When there has been an overpayment..., the local government shall remit the overpaid amount to the department."

REP. MORGAN asked whether MACO would consider a friendly amendment which allowed the state to withhold overpayment of a local government's Entitlement Share vs. waiting for repayment from the county. **Bill Kennedy** said that it would probably be faster if the state let the county know, so that the county could write a repayment check. **REP. MORGAN** said that she was talking about trust, and asked: "What if the county does not pay?" **Bill Kennedy** said that they could look at an amendment like the one **REP. MORGAN** was referring to.

CHAIRMAN NOENNIG asked Mr. Blattie: "If the amount is owed, and it is a mutual debt, why shouldn't it be set off? Do you want the state agency to have to prove the amount of the debt, or are you afraid that the debt will be accelerated?" **Harold Blattie** stated: "Without question, if it is an overpayment from the Entitlement Share, the refund should be issued immediately. If it is a totally unrelated thing and there is a disagreement, it should go through other channels, rather than the state having the ability to arbitrarily withhold that."

CHAIRMAN NOENNIG asked whether the point was that the debt be unrelated and disputed about, and that the local government would want the state to prove the amount owed before they just kept it? **Harold Blattie** answered in the affirmative.

Closing by Sponsor:

REP. GILLAN said that this is a simple, straightforward, important piece of legislation. She said that the counties would work with the committee if they have any amendments that they wish to add.

ADJOURNMENT

Adjournment: 5 P.M.

REP. MARK NOENNIG, Chairman

LINDA KEIM, Secretary

MN/LK

EXHIBIT (loh14aad)